

Appendix I

**Agreement Regarding Flooding and Drainage
for Bel Marin Keys Unit V Property**

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This agreement is entered into by and between the State Coastal Conservancy (Conservancy), the County of Marin (County) and the City of Novato (City) on, September 10, 2002, with respect to the following facts:

RECITALS

WHEREAS, the Conservancy is an agency of the State of California with responsibility for implementing a program of area restoration and resource enhancement in the coastal zone and San Francisco Bay, and is committed to undertaking projects to protect, restore and enhance natural habitats and connecting corridors, watersheds, scenic areas, and other open-space resources of importance to the San Francisco Bay region and the people and the wildlife of California; and

WHEREAS, the State of California, acting by and through the Conservancy, is the owner in fee of real property in the County of Marin known as Bel Marin Keys Unit V (BMKV, BMKV property, site or BMKV site); and

WHEREAS, the Conservancy acquired BMKV for wetland restoration and protection of open-space resources and natural habitats, and for expansion of the Hamilton Wetland Restoration Project (HWRP) on adjacent property (the "project"); and

WHEREAS, the HWRP was authorized by Congress in the Water Resources Development Act (WRDA) of 1999 for implementation by the Civil Works Program of the United States Army Corps of Engineers (the Corps) in cooperation with the Conservancy as the non-federal sponsor; and

WHEREAS, the Corps and the Conservancy are currently undertaking environmental review (SEIR/EIS) and feasibility analysis of the proposed addition of BMKV to the HWRP via federal legislation (WRDA 2002); and

WHEREAS, if the BMKV project is authorized by federal legislation, further actions by the Conservancy and the Corps will be required prior to its construction, including but not limited to detailed project planning and design, and execution of the Project Cooperation Agreement pursuant to which the Conservancy would provide the necessary lands, easements and rights of way for the project, the Corps would construct the project on a cost-share basis and would provide a project management plan (PMP) detailing remaining work anticipated to be complete prior to initiating construction; and

WHEREAS, the BMKV property lies within the secondary floodway zone designated F-2 under Section 22.95.010 of Marin County zoning regulations, whose purpose is to insure that life and property will be protected and to prevent increased flooding due to random and uncontrolled development which will impede the capacity of secondary floodplains to receive overflow floodwaters; and

WHEREAS, the BMKV property is the subject of drainage agreements with the Marin County Flood Control and Water Conservation District and/or Bel Marin Keys Community Services District; and

WHEREAS, the Conservancy recognizes that flood zoning (F-2 designation) and drainage agreements at BMKV are critical issues that must be addressed prior to implementing any project at the site; and

WHEREAS, the Conservancy is committed to working with the County, the City, the Bel Marin Keys Community Service District and other interested parties to resolve these issues; and

WHEREAS, studies to date by the Conservancy and the Corps include a hydrologic and hydraulic analysis that concludes that potential future conditions at the BMKV site will not significantly increase flood stage on Novato Creek if the proposed project is implemented; and

WHEREAS, the Conservancy and Corps are committed to employing sound engineering principles and scientifically-defensible approaches to designing this project; and

WHEREAS, the County has responsibility to assess the BMKV restoration project for conformance with flood zoning; and

WHEREAS, additional hydrologic/hydraulic study requested by the County and the City and currently funded by the Conservancy and the Corps to further establish the relationship of existing and potential future conditions at the BMKV site to Standard Project Flood stage as mutually agreed to by the parties, on Novato Creek and its watershed under a variety of conditions will not be completed within the period of environmental review (SEIR/EIS) and feasibility analysis of the project for purposes of authorizing the addition of BMKV to the HWRP via federal legislation (WRDA 2002); and

WHEREAS, resolution of the issues described in this agreement is of great importance to the County and the City, and all parties agree on the importance of restoring BMKV to wetlands and desire to facilitate the implementation of a wetlands restoration project on the site so long as the project does not cause significant adverse impacts to surrounding properties and the environment;

NOW THEREFORE IT IS AGREED AS FOLLOWS:

A. The above recitals accurately reflect the facts and understandings of the parties, and are incorporated herein by reference.

B. Although the Conservancy and Corps believe there are no such impacts based on current studies, the parties agree that any potential significant adverse hydrologic impacts of the wetland restoration project must be avoided, and that the governing flood protection zoning and drainage agreements for the BMKV property must be addressed to the satisfaction of the City and County consistent with this Agreement, before the Conservancy makes any formal commitment (including but not limited to executing a

Project Cooperation Agreement with the Corps) to undertake the project. The parties therefore agree that additional studies based on a mutually acceptable methodology and scope of work are appropriate, and further acknowledge that if these additional studies reveal a potential for a significant adverse hydrologic and/or hydraulic impact, the project's SEIR/EIS shall be revised to address said impacts and recirculated pursuant to applicable law. However, the parties agree that the BMKV project shall be designed such that the project meets the following Performance Standards, and that the hydrologic and/or hydraulic impacts of the project on surrounding properties should be determined on the basis of these Performance Standards:

Performance Standards

1. No increase above "baseline" as defined below in peak water surface elevations in San Jose, Pacheco, Novato Creeks and Pacheco Pond.
2. No increase above "baseline" as defined below in peak water surface elevations in the Bel Marin Keys lagoons.
3. No increase above "baseline" as defined below in peak water surface elevations in the Novato Creek watershed that would increase the potential for flooding.

Compliance with the Performance Standards will be determined by the County and City by a comparison of projected conditions with the project to projected conditions without the project.

C. The Conservancy agrees that additional hydrologic and hydraulic study being funded and carried out in cooperation with the Corps will:

1. Be developed on the basis of a scope of work that has been reviewed and approved by a qualified third-party consultant of the City and/or County with hydrology expertise;
 - a. This scope of work shall accurately define the present "baseline" condition of the Novato Creek watershed based on mutually agreed parameters. The model shall be calibrated based on mutually agreed parameters. The identified baseline will incorporate tidal data and hydrographs approved by the County and City.
2. Provide modeling and analysis acceptable to all parties to further establish the relationship of existing and potential future conditions at the BMKV site to Standard Project Flood as mutually agreed to by the parties on Novato Creek and its watershed under a variety of hydrologic and tidal conditions;
3. Include an analysis acceptable to the parties of levee overtopping and breaching during high water events; and
4. Be subject to peer review by a qualified third-party consultant to the City and/or County as provided below.

D. The Conservancy, the County and the City agree to work together and with the Corps to assess F-2 zoning and drainage agreement issues associated with the project and implement a mutually acceptable solution as follows:

1. If the hydrologic/hydraulic studies are determined to be adequate by the County and City and the studies conclude that the project meets the Performance Standards set forth in Section B above, the County Community Development Agency and Department of Public Works will recommend that the Marin County Board of Supervisors act affirmatively on the F-2 zoning as necessary to allow or provide for the wetlands project as proposed by the Conservancy; or the County Community Development Agency and Department of Public Works may inform the Conservancy in writing that further Board of Supervisors actions are not required as specified below.
 2. If the hydrologic/hydraulic studies are determined to be adequate by the County and City and those studies conclude that the project meets the Performance Standards set forth in Section B above, then the Marin County Flood Control and Water Conservation District will work with the Conservancy to approve any necessary amendments to the existing drainage agreements required to implement the project.
 3. If the hydrologic/hydraulic studies are determined adequate by the County and City and those studies conclude that the project does not meet the Performance Standards set forth in Section B above, the Conservancy agrees that it will not execute a Project Cooperation Agreement committing to implementation of the project nor commence construction of the project until flooding issues have been resolved or mitigated to the satisfaction of the County and City to meet the Performance Standards.
- E. Upon completion of hydrology/hydraulic studies pursuant to Section C. above, the parties agree to the following process to address the issues identified in this agreement:
1. The County and City shall have sixty (60) days from the date of receipt of an administrative draft of the additional studies contemplated by this agreement to provide technical comments on the studies. Once the issues raised by those comments are resolved to the satisfaction of the parties, a final draft of the studies shall be issued. The County and City shall then have ninety (90) to complete the public process contemplated by paragraph E. 2. below
 2. The County shall solicit input from the Marin County Flood Control and Water Conservation District, the Bel Marin Keys Community Services District, and other interested parties and members of the public, and assure that these parties' concerns are addressed.
 3. If the City and County determine following the public process that the studies are adequate to address the concerns covered by this agreement and that no further actions are required, the County and City shall so inform the Conservancy in writing within 5 days of the close of the ninety (90) day period specified in E.1 above and the parties shall have no further obligations under this agreement, so long as the project is carried out in a manner that satisfies the Performance Standards. If either the City and/or the County determines that the studies are not adequate to address these concerns, then at the end of the ninety (90) day period specified in E.1 above, the party(ies) having made such determination shall notify the Conservancy, in writing. This writing shall identify the issues that in the opinion of the authors have not been resolved as well as recommend measures, if

any, that in the party's opinion could be taken to address the issues.

4. To the extent that any issues identified by the County can be resolved by means of actions necessary to (a) find the project to be consistent with F-2 zoning; or (b) amend existing drainage agreements, the County agrees to act expeditiously and in good faith to present those actions to its Board of Supervisors and affected districts, respectively. The Conservancy agrees to work with the Marin County Flood Control and Water Conservation District and Bel Marin Keys Community Services District to amend any drainage agreements as necessary to implement the project consistent with the Performance Standards. To the extent that any issues identified by the City and/or the County can be resolved through engineering design to meet the Performance Standards, the Conservancy agrees to work with the Corps, the County and City to define and implement actions needed to meet the Performance Standards.
5. If the County and/or City ultimately determines that the project will not comply with the Performance Standards, the Conservancy shall not pursue sponsorship of the project through a Project Cooperation Agreement with the Corps nor commence construction of the project until any and all flooding impacts are resolved to meet the Performance Standards as determined by the City and County. Nothing in this agreement shall be construed to otherwise limit the County or the Flood Control Districts land use, zoning, police powers, or other powers with respect to this property.

F. Except as otherwise expressly provided in this Agreement, all actions required to be taken on behalf of the City shall be taken by the Director of Public Works; all actions required to be taken by the County shall be taken by the directors of Public Works and the Community Development Agency; and all actions required to be taken by the Conservancy shall be taken by its Executive Officer. Notices required under this Agreement shall be provided as follows:

TO CITY:

City Director of Public Works,
C/o Steve Wallace
City of Novato
901 Sherman Ave.
Novato, CA 94947

TO COUNTY:

Marin County Department of Public Works
C/o Craig Tackabery
3501 Civic Center Dr., Suite 304
San Rafael, CA 94903

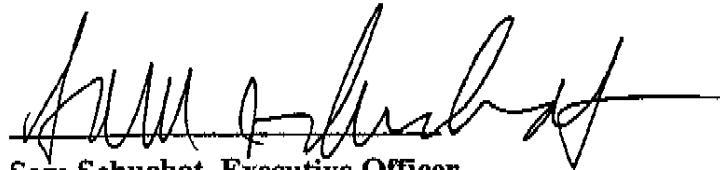
TO CONSERVANCY: State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612
Att: Tom Gandesbery, Project Manager

G. Each party represents that the person signing this agreement on its behalf has been duly authorized to do so and that his/her signature binds the party which he/she represents to the terms and conditions hereof.

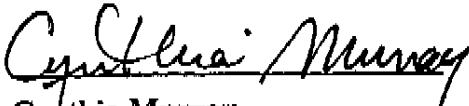
H. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which constitute one agreement notwithstanding the fact that all parties are not signatories either on the same date or to the same counterpart.

ON THIS DAY:

IN WITNESS WHEREOF, the parties hereto agree to carry out this agreement:



Sam Schuchat, Executive Officer
State Coastal Conservancy



Cynthia Murray
President, Board of Supervisors
County of Marin



Rod Wood, City Manager
City of Novato